

# STATE OF NEW YORK

8441--A

## IN SENATE

May 7, 2018

Introduced by Sens. PHILLIPS, HELMING, AKSHAR, LITTLE, MARCHIONE, YOUNG  
-- read twice and ordered printed, and when printed to be committed to  
the Committee on Insurance -- committee discharged, bill amended,  
ordered reprinted as amended and recommitted to said committee

AN ACT to amend the insurance law, in relation to insurance coverage of  
in vitro fertilization and other fertility preservation treatments

The People of the State of New York, represented in Senate and Assem-  
bly, do enact as follows:

1 Section 1. Paragraph 13 of subsection (i) of section 3216 of the  
2 insurance law is amended by adding four new subparagraphs (C), (D), (E)  
3 and (F) to read as follows:

4 (C) Every policy delivered or issued for delivery in this state that  
5 provides coverage for hospital, surgical or medical care shall provide  
6 up to fifty thousand dollars coverage for:

7 (i) in vitro fertilization used in the treatment of infertility; and  
8 (ii) standard fertility preservation services when a necessary medical  
9 treatment may directly or indirectly cause iatrogenic infertility to a  
10 covered person.

11 (D) (i) For the purposes of subparagraph (C) of this paragraph,  
12 "infertility" means a condition or disease characterized by the incapac-  
13 ity to impregnate another person or to conceive, as diagnosed or deter-  
14 mined (I) by a physician licensed to practice medicine in this state, or  
15 (II) by the failure to establish a clinical pregnancy after twelve  
16 months of regular, unprotected sexual intercourse, or after six months  
17 of regular, unprotected sexual intercourse in the case of a female twen-  
18 ty-one to forty-four years of age.

19 (ii) For the purposes of subparagraph (C) of this paragraph, "iatro-  
20 genic infertility" means an impairment of fertility by surgery, radi-  
21 ation, chemotherapy or other medical treatment affecting reproductive  
22 organs or processes.

23 (E) No insurer providing coverage under this paragraph shall discrimi-  
24 nate based on a covered individual's expected length of life, present or  
25 predicted disability, degree of medical dependency, perceived quality of  
26 life, or other health conditions, nor based on personal characteristics,

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 including age, sex, sexual orientation, marital status or gender identi-  
2 ty.

3 (F) Notwithstanding any other provision of this subsection, a reli-  
4 gious employer may request a contract without coverage for in vitro  
5 fertilization used in the treatment of infertility and standard fertili-  
6 ty preservation services that are contrary to the religious employer's  
7 religious tenets. If so requested, such contract shall be provided with-  
8 out coverage for services.

9 (i) For purposes of this subsection, a "religious employer" is an  
10 entity for which each of the following is true:

11 (I) The inculcation of religious values is the purpose of the entity.

12 (II) The entity primarily employs persons who share the religious  
13 tenets of the entity.

14 (III) The entity serves primarily persons who share the religious  
15 tenets of the entity.

16 (IV) The entity is a nonprofit organization as described in Section  
17 6033(a)(2)(A)i or iii, of the Internal Revenue Code of 1986, as amended.

18 (ii) Every religious employer that invokes the exemption provided  
19 under this subparagraph shall provide written notice to prospective  
20 enrollees prior to enrollment with the plan, listing the treatment of  
21 infertility and standard fertility preservation services the employer  
22 refuses to cover for religious reasons.

23 § 2. Paragraph 6 of subsection (k) of section 3221 of the insurance  
24 law is amended by adding four new subparagraphs (E), (F), (G) and (H) to  
25 read as follows:

26 (E) Every group policy delivered or issued for delivery in this state  
27 that provides hospital, surgical or medical coverage shall provide up to  
28 fifty thousand dollars of coverage for:

29 (i) in vitro fertilization used in the treatment of infertility; and

30 (ii) standard fertility preservation services when a necessary medical  
31 treatment may directly or indirectly cause iatrogenic infertility to a  
32 covered person.

33 (F) (i) For the purposes of subparagraph (E) of this paragraph,  
34 "infertility" means a condition or disease characterized by the incapac-  
35 ity to impregnate another person or to conceive, as diagnosed or deter-  
36 mined (I) by a physician licensed to practice medicine in this state, or  
37 (II) by the failure to establish a clinical pregnancy after twelve  
38 months of regular, unprotected sexual intercourse, or after six months  
39 of regular, unprotected sexual intercourse in the case of a female twen-  
40 ty-one to forty-four years of age.

41 (ii) For the purposes of subparagraph (E) of this paragraph, "iatro-  
42 genic infertility" means an impairment of fertility by surgery, radi-  
43 ation, chemotherapy or other medical treatment affecting reproductive  
44 organs or processes.

45 (G) No insurer providing coverage under this paragraph shall discrimi-  
46 nate based on a covered individual's expected length of life, present or  
47 predicted disability, degree of medical dependency, perceived quality of  
48 life, or other health conditions, nor based on personal characteristics,  
49 including age, sex, sexual orientation, marital status or gender identi-  
50 ty.

51 (H) Notwithstanding any other provision of this subsection, a reli-  
52 gious employer may request a contract without coverage for in vitro  
53 fertilization used in the treatment of infertility and standard fertili-  
54 ty preservation services that are contrary to the religious employer's  
55 religious tenets. If so requested, such contract shall be provided with-  
56 out coverage for services.

1 (i) For purposes of this subsection, a "religious employer" is an  
2 entity for which each of the following is true:

3 (I) The inculcation of religious values is the purpose of the entity.

4 (II) The entity primarily employs persons who share the religious  
5 tenets of the entity.

6 (III) The entity serves primarily persons who share the religious  
7 tenets of the entity.

8 (IV) The entity is a nonprofit organization as described in Section  
9 6033(a)(2)(A)i or iii, of the Internal Revenue Code of 1986, as amended.

10 (ii) Every religious employer that invokes the exemption provided  
11 under this subparagraph shall provide written notice to prospective  
12 enrollees prior to enrollment with the plan, listing the treatment of  
13 infertility and standard fertility preservation services the employer  
14 refuses to cover for religious reasons.

15 § 3. Subsection (s) of section 4303 of the insurance law, as amended  
16 by section 2 of part F of chapter 82 of the laws of 2002, is amended by  
17 adding four new paragraphs 5, 6, 7 and 8 to read as follows:

18 (5) Every contract issued by a medical expense indemnity corporation,  
19 hospital service corporation or health service corporation for delivery  
20 in this state that provides hospital, surgical or medical coverage shall  
21 provide up to fifty thousand dollars of coverage for:

22 (A) in vitro fertilization used in the treatment of infertility; and

23 (B) standard fertility preservation services when a necessary medical  
24 treatment may directly or indirectly cause iatrogenic infertility to a  
25 covered person.

26 (6) (A) For the purposes of paragraph five of this subsection, "infer-  
27 tility" means a condition or disease characterized by the incapacity to  
28 impregnate another person or to conceive, as diagnosed or determined (i)  
29 by a physician licensed to practice medicine in this state, or (ii) by  
30 the failure to establish a clinical pregnancy after twelve months of  
31 regular, unprotected sexual intercourse, or after six months of regular,  
32 unprotected sexual intercourse in the case of a female twenty-one to  
33 forty-four years of age.

34 (B) For the purposes of paragraph five of this subsection, "iatrogenic  
35 infertility" means an impairment of fertility by surgery, radiation,  
36 chemotherapy or other medical treatment affecting reproductive organs or  
37 processes.

38 (7) No medical expense indemnity corporation, hospital service corpo-  
39 ration or health service corporation providing coverage under this  
40 subsection shall discriminate based on a covered individual's expected  
41 length of life, present or predicted disability, degree of medical  
42 dependency, perceived quality of life, or other health conditions, nor  
43 based on personal characteristics, including age, sex, sexual orien-  
44 tation, marital status or gender identity.

45 (8) Notwithstanding any other provision of this subsection, a reli-  
46 gious employer may request a contract without coverage for in vitro  
47 fertilization used in the treatment of infertility and standard fertili-  
48 ty preservation services that are contrary to the religious employer's  
49 religious tenets. If so requested, such contract shall be provided with-  
50 out coverage for services.

51 (A) For purposes of this subsection, a "religious employer" is an  
52 entity for which each of the following is true:

53 (i) The inculcation of religious values is the purpose of the entity.

54 (ii) The entity primarily employs persons who share the religious  
55 tenets of the entity.

1 (iii) The entity serves primarily persons who share the religious  
2 tenets of the entity.

3 (iv) The entity is a nonprofit organization as described in Section  
4 6033(a)(2)(A)i or iii, of the Internal Revenue Code of 1986, as amended.

5 (B) Every religious employer that invokes the exemption provided under  
6 this paragraph shall provide written notice to prospective enrollees  
7 prior to enrollment with the plan, listing the treatment of infertility  
8 and standard fertility preservation services the employer refuses to  
9 cover for religious reasons.

10 § 4. Subparagraph (C) of paragraph 6 of subsection (k) of section 3221  
11 of the insurance law, as amended by section 1 of part K of chapter 82 of  
12 the laws of 2002, is amended to read as follows:

13 (C) Coverage of diagnostic and treatment procedures, including  
14 prescription drugs, used in the diagnosis and treatment of infertility  
15 as required by subparagraphs (A) and (B) of this paragraph shall be  
16 provided in accordance with the provisions of this subparagraph.

17 (i) [~~Coverage shall be provided for persons whose ages range from~~  
18 ~~twenty-one through forty-four years, provided that nothing herein shall~~  
19 ~~preclude the provision of coverage to persons whose age is below or~~  
20 ~~above such range.~~

21 (ii)] Diagnosis and treatment of infertility shall be prescribed as  
22 part of a physician's overall plan of care and consistent with the  
23 guidelines for coverage as referenced in this subparagraph.

24 [(iii)] (ii) Coverage may be subject to co-payments, coinsurance and  
25 deductibles as may be deemed appropriate by the superintendent and as  
26 are consistent with those established for other benefits within a given  
27 policy.

28 [~~(iv) Coverage shall be limited to those individuals who have been~~  
29 ~~previously covered under the policy for a period of not less than twelve~~  
30 ~~months, provided that for the purposes of this subparagraph "period of~~  
31 ~~not less than twelve months" shall be determined by calculating such~~  
32 ~~time from either the date the insured was first covered under the exist-~~  
33 ~~ing policy or from the date the insured was first covered by a previous-~~  
34 ~~ly in-force converted policy, whichever is earlier.~~

35 (v)] (iii) Coverage shall not be required to include the diagnosis and  
36 treatment of infertility in connection with: (I) [~~in vitro fertiliza-~~  
37 ~~tion, gamete intrafallopian tube transfers or zygote intrafallopian tube~~  
38 ~~transfers; (II)] the reversal of elective sterilizations; [(III)] (II)  
39 sex change procedures; [(IV)] (III) cloning; or [(V)] (IV) medical or  
40 surgical services or procedures that are deemed to be experimental in  
41 accordance with clinical guidelines referenced in clause [(vi)] (iv) of  
42 this subparagraph.~~

43 [(vi)] (iv) The superintendent, in consultation with the commissioner  
44 of health, shall promulgate regulations which shall stipulate the guide-  
45 lines and standards which shall be used in carrying out the provisions  
46 of this subparagraph, which shall include:

47 (I) [~~The determination of "infertility" in accordance with the stand-~~  
48 ~~ards and guidelines established and adopted by the American College of~~  
49 ~~Obstetricians and Gynecologists and the American Society for Reproduc-~~  
50 ~~tive Medicine;~~

51 (II)] The identification of experimental procedures and treatments not  
52 covered for the diagnosis and treatment of infertility determined in  
53 accordance with the standards and guidelines established and adopted by  
54 the American College of Obstetricians and Gynecologists and the American  
55 Society for Reproductive Medicine;

1 [~~(III)~~] (II) The identification of the required training, experience  
2 and other standards for health care providers for the provision of  
3 procedures and treatments for the diagnosis and treatment of infertility  
4 determined in accordance with the standards and guidelines established  
5 and adopted by the American College of Obstetricians and Gynecologists  
6 and the American Society for Reproductive Medicine; and

7 [~~(IV)~~] (III) The determination of appropriate medical candidates by  
8 the treating physician in accordance with the standards and guidelines  
9 established and adopted by the American College of Obstetricians and  
10 Gynecologists and/or the American Society for Reproductive Medicine.

11 § 5. Paragraph 3 of subsection (s) of section 4303 of the insurance  
12 law, as amended by section 2 of part K of chapter 82 of the laws of  
13 2002, is amended to read as follows:

14 (3) Coverage of diagnostic and treatment procedures, including  
15 prescription drugs used in the diagnosis and treatment of infertility as  
16 required by paragraphs one and two of this subsection shall be provided  
17 in accordance with this paragraph.

18 (A) Coverage shall be provided for persons whose ages range from twen-  
19 ty-one through forty-four years, provided that nothing herein shall  
20 preclude the provision of coverage to persons whose age is below or  
21 above such range.

22 (B) Diagnosis and treatment of infertility shall be prescribed as part  
23 of a physician's overall plan of care and consistent with the guidelines  
24 for coverage as referenced in this paragraph.

25 (C) Coverage may be subject to co-payments, coinsurance and deduct-  
26 ibles as may be deemed appropriate by the superintendent and as are  
27 consistent with those established for other benefits within a given  
28 policy.

29 [~~(D) Coverage shall be limited to those individuals who have been~~  
30 ~~previously covered under the policy for a period of not less than twelve~~  
31 ~~months, provided that for the purposes of this paragraph "period of not~~  
32 ~~less than twelve months" shall be determined by calculating such time~~  
33 ~~from either the date the insured was first covered under the existing~~  
34 ~~policy or from the date the insured was first covered by a previously~~  
35 ~~in force converted policy, whichever is earlier.~~

36 (E)] (D) Coverage shall not be required to include the diagnosis and  
37 treatment of infertility in connection with: (i) [~~in vitro fertiliza-~~  
38 ~~tion, gamete intrafallopian tube transfers or zygote intrafallopian tube~~  
39 ~~transfers; (ii)] the reversal of elective sterilizations; [~~(iii)~~] (ii)  
40 sex change procedures; [~~(iv)~~] (iii) cloning; or [~~(v)~~] (iv) medical or  
41 surgical services or procedures that are deemed to be experimental in  
42 accordance with clinical guidelines referenced in subparagraph [~~(F)~~] (E)  
43 of this paragraph.~~

44 (E) Notwithstanding any other provision of this subsection, a reli-  
45 gious employer may request a contract without coverage for in vitro  
46 fertilization used in the treatment of infertility and standard fertili-  
47 ty preservation services that are contrary to the religious employer's  
48 religious tenets. If so requested, such contract shall be provided with-  
49 out coverage for services.

50 (i) For purposes of this subsection, a "religious employer" is an  
51 entity for which each of the following is true:

52 (I) The inculcation of religious values is the purpose of the entity.

53 (II) The entity primarily employs persons who share the religious  
54 tenets of the entity.

55 (III) The entity serves primarily persons who share the religious  
56 tenets of the entity.

1 (IV) The entity is a nonprofit organization as described in Section  
2 6033(a)(2)(A)i or iii, of the Internal Revenue Code of 1986, as amended.

3 (ii) Every religious employer that invokes the exemption provided  
4 under this subparagraph shall provide written notice to prospective  
5 enrollees prior to enrollment with the plan, listing the treatment of  
6 infertility and standard fertility preservation services the employer  
7 refuses to cover for religious reasons.

8 (F) The superintendent, in consultation with the commissioner of  
9 health, shall promulgate regulations which shall stipulate the guide-  
10 lines and standards which shall be used in carrying out the provisions  
11 of this paragraph, which shall include:

12 (i) [~~The determination of "infertility" in accordance with the stand-~~  
13 ~~ards and guidelines established and adopted by the American College of~~  
14 ~~Obstetricians and Gynecologists and the American Society for Reproduc-~~  
15 ~~tive Medicine;~~

16 ~~(ii)]~~ (ii) The identification of experimental procedures and treatments not  
17 covered for the diagnosis and treatment of infertility determined in  
18 accordance with the standards and guidelines established and adopted by  
19 the American College of Obstetricians and Gynecologists and the American  
20 Society for Reproductive Medicine;

21 [~~(iii)]~~ (ii) The identification of the required training, experience  
22 and other standards for health care providers for the provision of  
23 procedures and treatments for the diagnosis and treatment of infertility  
24 determined in accordance with the standards and guidelines established  
25 and adopted by the American College of Obstetricians and Gynecologists  
26 and the American Society for Reproductive Medicine; and

27 [~~(iv)]~~ (iii) The determination of appropriate medical candidates by  
28 the treating physician in accordance with the standards and guidelines  
29 established and adopted by the American College of Obstetricians and  
30 Gynecologists and/or the American Society for Reproductive Medicine.

31 § 6. This act shall take effect January 1, 2020 and shall apply to all  
32 policies issued, renewed, altered or modified on or after such date.